

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

OMAR MARRERO, pro se,

Plaintiff,  
v.

CIVIL ACTION  
NO. 04-30230-KPN

FRANKLIN COUNTY  
FRANKLIN COUNTY SHERIFF MACDONALD  
FRANKLIN COUNTY SHERIFF'S DEPARTMENT,  
FRANKLIN COUNTY HOUSE OF CORRECTIONS,  
SUPERINTENDENT BYRON,  
DEPUTY SUPERINTENDENT SHEPARD,  
DEPUTY SUPERINTENDENT HILL,  
DEPUTY SUPERINTENDENT FITZPATRICK,  
FRANKLIN COUNTY HOUSE OF CORRECTIONS  
MEDICAL DEPARTMENT  
NURSE MORNINGSTAR, MEDICAL ADMINISTRATOR,  
Defendants.

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to the provisions of Rule 56 of the Federal Rules of Civil Procedure, the Defendants, Franklin County Sheriff Macdonald, Franklin County Sheriff's Department, Franklin County House of Corrections, Superintendent Byron, Deputy Superintendent Shepard, Deputy Superintendent Hill, Deputy Superintendent Fitzpatrick, Franklin County House of Corrections Medical Department and Nurse Morningstar, Medical Administrator move this Court to enter summary judgment in their favor because the Plaintiff has failed to state a claim upon which relief can be granted.

In support of such Motion, the Defendants state that, since the Plaintiff Omar Marrero is no longer a resident of Franklin County House of Corrections, he is barred from obtaining any injunctive relief. *See Affidavit of Sheriff Macdonald attached. Purvis v. Ponte*, 929 F.2d 822,825 (1st Cir. 1991) (holding that former inmate's action against prison officials was moot because he no longer resided at the prison)

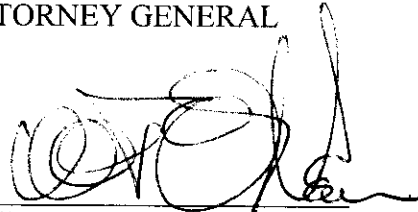
Further, insofar as Plaintiff's suit is brought against a Massachusetts institution and its administrators in their official capacities, it is barred under the Eleventh Amendment to the United States Constitution, which proscribes damage suits against states without their consent. *See Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627, 634

(1999); *Hans v. Louisiana*, 134 U.S. 1,20 (1890) and *Greenless v. Almond*, 277 F.3d 601, 606-07 (1st Cir. 2002)

WHEREFORE, the Defendant respectfully requests that summary judgment be entered in its favor in the above-entitled action as the plaintiff has failed to state a claim upon which relief can be granted.

Respectfully submitted,  
Commonwealth of Massachusetts  
By Its Attorney,

THOMAS F. REILLY  
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'W. P. O'Neill', is written over a horizontal line.

William P. O'Neill BBO#379745  
Assistant Attorney General  
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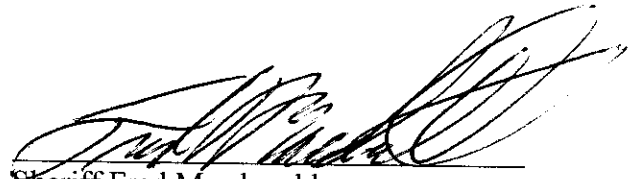
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**AFFIDAVIT OF FRED MACDONALD AS SHERIFF OF FRANKLIN COUNTY HOUSE  
OF CORRECTIONS**

I, Fred Macdonald, do hereby depose and state under oath as follows:

1. I am the Sheriff of Franklin County House of Corrections in Franklin County.
2. Omar Marrero was incarcerated from December 30, 2003 to January 3, 2005.
3. Mr. Marrero is no longer being housed in the Franklin County House of Corrections.

This statement is made under the pains and penalties of perjury this 29<sup>th</sup> day of July  
2005.

  
\_\_\_\_\_  
Sheriff Fred Macdonald  
Franklin County House of Corrections